



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,911	10/26/2001	Timo Burzel	(Z) 01098 P US	8592

7590 08/11/2003

M. Robert Kestenbaum
11011 Bermuda Dunes NE
Albuquerque, NM 87111

EXAMINER

NGUYEN, THONG Q

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 08/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,911

Applicant(s)

BURZEL, TIMO

Examiner

Thong Q. Nguyen

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6. 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on August 17, 2001. It is noted, however, that applicant has not filed a certified copy of the Germany application as required by 35 U.S.C. 119(b).

Drawings

2. The drawings contain four sheets of figures 1-5 were received on 9/23/2002. These drawings are objected by the Examiner for the following reasons.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: In particular, the numerical references "4", "10", and "17" shown in figure 2; the numerical reference "49" as shown in figures 2 and 3; and the numerical reference "27" shown in figure 4 are not mentioned in the specification. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to provide an antecedent basis for each of the following features: First, the feature thereof "the crosshair plate...less than 0.1 mm" recited in each of claims 11 and 21; Second, the feature thereof "the constant...less than 0.05 mm" recited in claim 12; and Third, the feature thereof "the index plate...in magnitude" recited in each of claims 13 and 22.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 is misdescriptive of the invention as taught in the present specification by the recitation thereof "the index plate comprises a lateral guide". Applicant is respectfully invited to review the specification, in particular, pages 10-11, which discloses a mechanism for moving the index plate (29) in a lateral guide. The mechanism comprises a holder (30) supporting the plate (29) wherein the holder comprises a projection (25). The lateral movement/guide of the index plate is made by the operation of the spring (47), the projection (25) and the flat area (23). The specification does not disclose that the index plate (29) has a lateral guide.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-2, 4-5, 7, and 9-10, as best as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Finn (U.S. Patent No. 5,223,650) in view of Weyrauch (U.S. Patent No. 4,982,502).

Finn discloses a telescope sight with a level indicator. In columns 1-2 and figures 1-4, the telescope sight comprises a main tube (20) for supporting a plurality of optical elements including a reticle supported by a ring (22), a set of adjustments (16 and 18) for allowing changes in elevation and windage of the sight, and an indicating plate (28) associated with the reticle and tiltably mounted in the main tube. The connection between the plate (28) and the reticle is made via a mechanism comprises a screw (30) which acts as a holding and adjusting element for attaching the plate (28) to the ring (22) supported the reticle and the holes formed in the plate (28) and the ring (22) which act as a lateral guide for the mechanism. In column 2, Finn discloses that the screw (30) is able to adjust for the purpose of providing an optimal alignment between the plate (28) and reticle. In other words, the plate (28) is able to tilt with respect to the reticle in a vertical direction. The distance between the two elements (28 and 22) can be made small for the purpose of providing a good reading of the target shown in

Art Unit: 2872

the reticle. While Finn does not clearly state that the reticle is located in an immediate image plane; however, the position of a reticle in the immediate image plane of a sight is known to one skilled in the art as can be seen in the sight provided by Weyrauch. See column 2, lines 32+ and figure 1. It is also noted that the reticle is secured inside a holder (4) supporting a reversal system (3) is disclosed by Weyrauch as can be seen in column 2. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the sight provided by Finn by locating/positioning the reticle at the immediate image plane of the sight as suggested by Weyrauch for the purpose of easier alignment the reticle and the immediate image.

10. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finn in view of Weyrauch.

The combined product provided by Finn and Wayraugh as described above comprises all elements of the telescope recited in claims 14-15; however, it does not discloses the step of assembling the elements including the steps of pre-assembling the plate and the reticle. However, it would have been obvious to one skilled in the art to make a pre-assembly the plate (28) and the reticle (22) via the attaching the two by the screw (30) before insert the two into the inside of the tube supporting the reversal system for the purpose of avoiding the hardship of the alignment process between the two elements when they are located inside the telescope tube.

Art Unit: 2872

11. Claims 1-12 and 17-21, as best as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (U.S. Patent No. 4,777,352) in view of Finn (U.S. Patent No. 5,223,650).

Moore discloses a telescope sight having a reticle plate and an indicator plate. The system as described in columns 7-8 and shown in figures 1-2 comprises a main tube (37) supporting a plurality of elements including an objective lens system (15), an ocular lens system (7), an erector tube (14) supporting a reversal system, a reticle (13-13) formed on the surface of the erector tube, and an indicator plate (9) secured attached to the abutment surface of the erector tube in a parallel manner. Moore also discloses a mechanism for controlling the movement of the indicator plate (9) with respect to the reticle (13-13) which mechanism comprises an adjusting element (5), a pin (8) and a spring (10) wherein the surface of the adjusting element and the pin has a spherical configuration (see figure 2). It is also noted that the plate (9) is able to move upward and downward with respect to the reticle by the grooves defined by the retaining members (11,11) and the abutment surface of the rector tube, then such grooves acts as a lateral guide for the indicator plate (9). While Moore does not explicitly state about the distance between the plate (9) and the reticle; however, it would have been obvious to one skilled in the art at the time the invention was made to make the distance therebetween as small as possible for the purpose of providing an easy alignment between the crosshairs (12) of the

Art Unit: 2872

palate (9) and the crosshairs (13-13) of the reticle and reducing the entering of dust or the like entering the space therebetween.

Since the indicator plate (9) is secured attached to the erector tube (14) supporting the reticle (13-13) via the retaining members (11, 11); therefore, when the erector tube is tilted with respect to the main tube (37) then the indicator plate (9) will automatically tilt with respect to the main tube.

While Moore refers to the screws for adjusting the tilt of the erector tube inside the main tube (see column 1, lines 46+ and column 7, lines 30+), he does not clearly state that the adjusting screws are horizontal and vertical drives; however, such use of horizontal and vertical drives for moving an erector tube is well known to one skilled in the art as can be seen in the telescope sight provided by Finn. See columns 1-2 and fig. 1. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the scope provided by Moore by using horizontal and vertical drives as suggested by Finn for the purpose of adjusting the tilt/movement of the erector tube to adjusting an aim point. It would also been obvious to one skilled in the art to modify the scope provided by Moore by adjusting the distance between the plate (9) and the reticle as small as possible for the purpose of obtaining an easy alignment.

12. Claims 14-16 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of Finn.

The combined product provided by Moore and Finn as described above comprises all elements of the telescope recited in claims 14-16 and 23; however,

it does not disclose the step of assembling the elements including the steps of pre-assembling the plate and the reticle. In other words, one skilled in the art will recognize that (s)he will assemble the frame (9) and the erector tube (14) via the use of retaining members (11,11) before place the two after attached into the main tube (37) for the purpose of making an easy installation of the tube and the plate inside the main tube. The installation of the spring (10) is able to make after the installation of the frame (9) and the tube (14). Thus, it would have been obvious to one skilled in the art to make a pre-assembly the plate (28) and the reticle (22) via the attaching the two by the screw (30) before insert the two into the inside of the tube supporting the reversal system for the purpose of avoiding the hardship of the alignment process between the two elements when they are located inside the telescope tube.

13. Claims 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of Finn as applied to claims 1 and 6 above, and further in view of Rubbert (U.S. Patent No. 3,948,587).

The frame (9) provided by Moore does not have plural line markings wherein the distance between the markings are different as claimed. However, the use of a set of line markings whose distances are different for the purpose of providing a means for measurement is known to one skilled in the art as can be seen in the system provided by Rubbert. See columns 4-5 and 10 and figures 1-2 and 9-12. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the combined product provided by Moore and Finn

Art Unit: 2872

by using an indicator plate having plural line markings as suggested by Rubbert for the purpose of providing a better scale/indication for measurement.

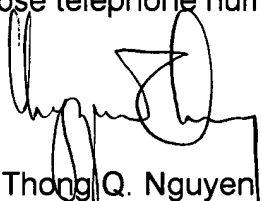
Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additional references are cited as of interest in that each discloses a telescope sight having reticules.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (703) 308-4814. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A Dunn can be reached on (703) 305-0024. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.



Thong Q. Nguyen
Primary Examiner
Art Unit 2872

August 5, 2003